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HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5175 OF 2007.

Dilip D. Mhatre & Anr. ..Petitioners.

Versus.

State of Maharashtra & Others ..Respondents.

Mr. M. M. Vashi for the petitioner.

Mr. A. A. Gangal for the respondent no.1.

Mr. Amit Borkar for respondent no.4.

Mr. Y. S. Jahagirdar a/w Mr. R. S. Datar for respondent no.8.

Mr. R. D. Rane A.G.P. for the State.

CORAM: S. B. MHASE &
D.G.KARNIK,JJ.

DATE: JULY 25, 2007.

P.C.

1. Heard.

2. The petitioner has approached this Court challenging the composition of the Transport Committee constituted by the Navi Mumbai Municipal Corporation. The Transport Committee, as per Section 25 of the Bombay Provincial Municipal Corporation Act, 1949 (hereinafter referred to as "the Act"), consists of 13 members, inclusive of the Chairman of the Standing Committee who is an ex-officio member. Remaining twelve members of the Transport Committee are to be appointed from among the persons who in the opinion of

the Corporation have experience of, and shown capacity in the administration or transport or in engineering, industrial, commercial, financial or labour matters and who **may or may not be councillors**. In the present case six members of the Transport Committee retired and therefore six persons were to be appointed on the said Committee. By a Resolution dated 20th June 2007 Corporation has appointed six non councillors as members of the Transport Committee. The remaining six members are also non councillors, who were appointed earlier. Under these circumstances learned counsel Mr. Vashi submitted that while making an appointment of the non councillors the provisions of Section 31A have been violated. He indirectly tried to persuade us that the appointment of the non councillors on Transport Committee is not permissible in view of the provisions of section 31A of the Act. He submitted that Section 31A starts with a non-obstante clause, and therefore according to him the said section would override section 25.

3. We are not in agreement with the learned counsel. The argument though prima facie attractive one is without any merit. If the submission of the learned counsel is accepted that as a result of the non obstante clause in section 31A only the councillors can be appointed onthe Transport Committee then in these circumstances section 25(2) shall become otiose or would be rendered redundant. And while interpreting

the provisions utmost care has to be taken that no part of a legislation is rendered redundant. Section 31A, according to us, applies whenever on a specified committee councillors are to be appointed. We are considering a case of the Transport Committee where main section, i.e., section 25 of the Act provides that 12 members can be appointed from councillors and non councillors. In short, all 12 members can be non councillors.

4. Question of application of section 31A arises qua the Transport Committee while forming a Committee under section 25 if along with non councillors some councillors are to be appointed as members of the said Committee. However, if the Corporation decides that all 12 members to be appointed are non councillors then section 31A is not applicable. There is only one exception, namely, the Chairman of the Standing Committee being a councillor is an ex-officio Chairman of the Committee is protected by Section 31A as a result of exception clause in section 31A itself. Therefore, we reject the submission of the learned counsel.

5. The second aspect which learned counsel agitated before us is that there should have been appointment or nomination, in stead of that the Corporation has conducted election and decision has been taken. We find no fault with the Corporation in

following such procedure because if the General Body is not unanimous in respect of the appointments to be made the only way left out is to decide it by majority and said system is followed.

6. Learned counsel Mr. Vashi invited our attention to an unreported judgment of this Court in a group of writ petitions decided on April 30, 2007 being Writ Petition No. 2564 of 2007 and others. We find that the said judgment is not applicable in the facts and circumstances of the present case, because in that judgment the constitution of the Standing Committee has been dealt with and what is important to be noted is that as per the statutory provisions all members of the Standing Committee are required to be councillors. Therefore the composition of the Standing Committee is governed by section 20 read with section 31A of the Act. Therefore, the said judgment is not relevant for the adjudication of the issue involved in the present matter.

7. We find that petition is without any merit. It is hereby rejected.

(D.G.KARNIK, J.) **(S.B.MHASE, J.)**